Supreme Court, U.S.
FILED
OCT 19 1990
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 90-550

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

THE EAST ASIATIC CO., INC., and
THE EAST ASIATIC CO., LTD.,
Petitioners,

v.

RSR CORPORATION, QUEMETCO, INC., and
QUEMETCO REALTY, INC.,
Respondents.

On Petition for a Writ of Certiorari to the State of Washington Court of Appeals, Division One

PETITIONERS' REPLY BRIEF

RONALD T. SCHAPS *
WILLIAM F. CRONIN
HEIDI A. IRVIN
BOGLE & GATES
Two Union Square
601 Union Street
Seattle, WA 98101
(206) 682-5151
Counsel for Petitioners The East Asiatic Co., Inc. and The East Asiatic Co., Ltd.

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-550

THE EAST ASIATIC CO., INC., and
THE EAST ASIATIC CO., LTD.,
Petitioners,

v.

RSR CORPORATION, QUEMETCO, INC., and
QUEMETCO REALTY, INC.,
Respondents.

On Petition for a Writ of Certiorari to the State of Washington Court of Appeals, Division One

---

PETITIONERS' REPLY BRIEF

The petitioners The East Asiatic Company, Inc., and The East Asiatic Company, Ltd. (collectively "EAC"), respectfully submit this reply in support of their petition for a writ of certiorari, filed September 28, 1990.[1]

---

[1] Pursuant to Rule 29.1, the list of petitioners' parent companies was provided in the Petition, at pp. ii-iv.

I. PETITIONERS PROPERLY RAISED AND PRESERVED THE ISSUE OF THE DEPRIVATION OF THEIR DUE PROCESS RIGHTS IN THE STATE COURT.

As EAC illustrated in the Petition at pp. 3-4, EAC properly presented the deprivation of its Fourteenth Amendment due process rights to the State of Washington Court of Appeals by raising and discussing the issue in its opening brief on appeal, its reply brief, and in its motion for reconsideration to the Court of Appeals. That the Court of Appeals chose not to render its opinion on the basis of the due process issue, nor even to mention the issue in its opinion, is not the fault of EAC.

Although respondents argued below as they do here that the constitutional question should not be considered, neither the Court of Appeals nor the Supreme Court of Washington disposed of the issue on the grounds that it had not been properly preserved. In fact, as respondents correctly note in their opposition brief, under Washington appellate procedure a party may raise a "manifest error affecting a constitutional right" for the first time in appellate court. Washington Court Rules on Appeal 2.5(a), Respondents' Brief Appendix B; *see also Bennett v. Hardy*, 113 Wash. 2d 912, 918-19, 784 P.2d 1258 (1990).

For the reasons stated in EAC's Petition, this Court should grant a writ of certiorari here to consider the constitutional question raised by the jury's unlawful award of punitive damages. The Washington appellate courts should not be allowed to ignore an improper verdict when the constitutional infirmities are evident on the face of the verdict form.

II. TO IDENTIFY AND REDRESS THE JURY MISCONDUCT IN THIS CASE REQUIRES ABSOLUTELY NO INTRUSION WHATSOEVER INTO THE JURY'S THOUGHT PROCESSES.

Respondents are correct when they state in their brief that the jury verdict in this case is unambiguous: the jury unambiguously awarded total damages in the amount of $19,445,000, which just as unambiguously included $6,498,000 as "3 yrs Penalty for Fraud." Petition at 42a. By asking this Court to address the constitutional problems with the jury's verdict, petitioners do not improperly impeach the jury's verdict; the verdict impeaches itself.

The question is not how or why the jury decided, but what it did. *Cf. Attridge v. Cencorp Division of Dover Technologies International, Inc.*, 836 F.2d 113, 117 (2d Cir. 1987) (juror interviews were "proper because they were designed to ascertain what the jury decided and not why they did so"). Here, the jury expressly included a penalty in its verdict. After being instructed that a penalty is a punishment and a form of punitive damages that could not be included as part of the verdict, the jury returned a second verdict for over $3,000,000 less than its first award. Petition at 3, 41a, 86a. The second verdict was a nullity because the jury had been discharged, so the trial court eventually entered a judgment based on the jury's original penalty verdict, despite EAC's objections.

Respondents argue that this case is an "evidence case" (as if any case were not an evidence case), and attempt to turn this Court's attention from the constitutional error apparent in the verdict to inapplicable authorities on impeachment of jury verdicts. This case, however, is not an "evidence case," as respondents are using that term. The evidence of the jury's error is plain from the face of the verdict form delivered in open court. The jury interjected considerations of punishment into a case about compensation, and the bar against impeachment does not prevent

this Court from considering the constitutional question raised by what unambiguously appears on the face of the verdict form.

Respectfully submitted,

RONALD T. SCHAPS *
WILLIAM F. CRONIN
HEIDI A. IRVIN
BOGLE & GATES
Two Union Square
601 Union Street
Seattle, WA 98101
(206) 682-5151
Counsel for Petitioners
The East Asiatic Co., Inc. and
The East Asiatic Co., Ltd.

* Counsel of Record